

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 THYLER COOKS,  
15 Defendant.

Criminal Case No. 14-cr-2060-L

**ORDER DENYING REQUEST FOR  
JUDICIAL RECOMMENDATION  
PURSUANT TO SECOND CHANCE  
ACT**

16  
17 Defendant, proceeding *pro se*, has filed a motion pursuant to the Second Chance  
18 Act seeking judicial recommendation that he serve the last twelve months of his custodial  
19 sentence in an RRC. The Government filed a Response in Opposition on February 23,  
20 2020. For the reasons outlined below, the Court **DENIES** the Motion.

21 On October 13, 2014, Defendant pled guilty to an information charging him with  
22 conspiracy to commit sex trafficking of children, in violation of 18 U.S.C. § 1594(c).  
23 According to the plea agreement, Defendant pled guilty to posting online advertisements  
24 which offered a sixteen-year old minor female for commercial sexual activity and renting  
25 a hotel room for the minor female to use in furtherance of the commission of the  
26 commercial sexual activity. (Plea at 4).

27 On April 6, 2015, this Court sentenced Defendant to 108 months in custody,  
28 followed by five years of supervised release. [ECF NO. ] Defendant now requests that

1 this Court make a judicial recommendation that his last twelve months of custody be  
2 spent in an RRC rather than in custody pursuant to the Second Chance Act.

3 In his Motion, Defendant claims that he will be homeless upon his release from  
4 custody, that the only residence he could return to is his mother's, but that his mother and  
5 grandmother encouraged his criminal behavior, therefore it is not a suitable environment  
6 for him as he re-enters society. (Mot. at 4). In addition, Defendant states he has very  
7 limited work history and needs additional vocational training, but the programs at FCI  
8 Lompoc have been very limited, therefore he argues he is in "dire need" of all the  
9 rehabilitation he can receive to make a successful transition. (*Id.*) In order to access  
10 vocational training programs prior to his RRC/halfway house placement, Defendant asks  
11 the Court to request a transfer to FCI Terminal Island where more programs are available.  
12 (*Id.* at 4-5).

13 In response, the Government argues that the Court should deny Defendant's  
14 motion for a post-sentencing recommendation because his offense directly caused the  
15 sexual exploitation of a minor. (Oppo. at 2). Although the Government acknowledges  
16 Defendant's expression of remorse for his criminal conduct, and efforts at rehabilitation  
17 while incarcerated, "these efforts are insufficient to warrant the requested  
18 recommendation, in light of the nature and circumstances of his offense. (*Id.*) Instead,  
19 the Government notes that the Court imposed a five-year term of supervised release  
20 following Defendant's custodial sentence, which can assist him with vocational training  
21 and housing, if he complies with the conditions of supervision. (*Id.*)

22 The Second Chance Act requires the Director of the Bureau of Prisons to "ensure  
23 that a prisoner serving a term of imprisonment spends a portion of the final months of  
24 that term (not to exceed 12 months), under conditions that will afford that prisoner a  
25 reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the  
26 community. Such conditions may include a community correctional facility." 18 U.S.C.  
27 § 3624(c)(1). The Bureau of Prisons considers the following factors when making its  
28 discretionary decision:

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence--
  - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
  - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to Section 994(a)(2) of title 28.

18 U.S.C. 3621(b); *see* C.F.R. § 570.22 (“Inmates will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. section 3621(b), determined on an individual basis, and of sufficient duration to provide the greatest likelihood of successful reintegration into the community. . .”)

A Court may order the BOP to direct an individualized consideration of Defendant’s request with regard to the statutory factors, but cannot order the BOP to make a designation. *See* 18 U.S.C. 3621(b); *United States v. Ceballos*, 671 F.3d 852, 855-56 (9<sup>th</sup> Cir. 2011).

Defendant urges the Court to issue a recommendation that he spend the last twelve months of his sentence in an RRC which would enable him to participate in vocational training, arguing that the Court’s endorsement would carry significant weight. However, the cases which Defendant cites in support of such a recommendation concern significantly different underlying criminal convictions than his conviction for sex trafficking of children such as bank fraud and wire fraud, *United States v. Brattin*, 2016 WL 4467897 (9<sup>th</sup> Cir. 2016); possession of cocaine powder and distribution of 50 grams or more of cocaine base, *United States v. Ellis*, 2017 WL 4641489 (9<sup>th</sup> Cir. 2017), and felon in possession of a firearm, *United States v. Bartels*, 2016 WL 6956796 (6<sup>th</sup> Cir. 2016).

In light of the seriousness of Defendant’s criminal conviction for sex trafficking of children in this case, the Court **DENIES** Defendant’s request to issue a judicial recommendation that he serve the last twelve months of his sentence in

1 an RRC, and instead leaves it to the Bureau of Prisons to determine whether such a  
2 placement is appropriate. The Court further **DENIES** Defendant's Request to  
3 recommend placement at FCI Terminal Island as unauthorized under the Second  
4 Chance Act. All decisions regarding transfer and placement are within the  
5 discretion of the Bureau of Prisons.

6  
7 **IT IS SO ORDERED.**

8  
9 Dated: March 9, 2020

10   
11 Hon. M. James Lorenz  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28